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BEFORE THE ARIZONA CORPORATION COMMISSION

SUSAN BITTER SMITH
CHAIRMAN
BOB STUMP
COMMISSIONER
BOB BURNS
COMMISSIONER
DOUG LITTLE
COMMISSIONER
TOM FORESE
COMMISSIONER

Arizona Corporation Commission

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AZ CORP COMMISSION
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ORIGINAL

IN THE MATTER OF THE APPLICATION OF
JOHNSON UTILITIES, LLC FOR AN
INCREASE IN ITS WATER AND
WASTEWATER RATES FOR CUSTOMERS
WITHIN PINAL COUNTY, ARIZONA.

Docket No. WS-02987A-08-0180

**RUCO'S RESPONSE TO JOHNSON UTILITIES' PETITION TO AMEND DECISIONS
74695 AND 74701 PURSUANT TO A.R.S. §40-252**

The Residential Utility Consumer Office ("RUCO") hereby files its Response to Johnson Utilities ("Johnson" or "Company") Petition to Amend Decision Nos. 74695 and 74701 pursuant to A.R.S. §40-252. RUCO opposes Johnson's request to remove the rate case filing requirement. The Company's request is clearly a breach of the Settlement Agreement ("Settlement Agreement" or "Settlement") entered into between the Company and RUCO and approved by the Commission in Decision No. 74695. See Settlement Agreement attached as Exhibit A.

RUCO has made it clear that its main interest in the Settlement is the provisions regarding the imputation of the income tax. RUCO agreed with the Company to extend the original rate case filing requirement noting that the filing issue was really a Company and Staff issue. See excerpt of RUCO Closing Brief filed in the underlying docket attached as Exhibit B.

1 RUCO still feels the same. However, the Settlement Agreement makes clear that all terms of
2 the Settlement are not severable – see paragraph 4.5 of Settlement Agreement. RUCO can
3 only surmise that the Company's request will also nullify the income tax provisions as well.

4 Moreover, under paragraph 4.6 of the Settlement Agreement the Company is obligated
5 to support and defend the Settlement. The Company's request will have the exact opposite
6 effect. RUCO requests that the Company's request be denied as proposed.

7 RUCO, however, would not be opposed to a new Agreement which supersedes the
8 original Settlement and extends the filing date provided the following conditions are met:

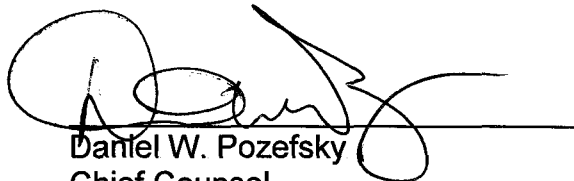
- 9 • All of the other terms of the original Settlement remain in place and are not subject
10 to change
- 11 • The Company is not overearning and can prove it consistent with the terms of the
12 Settlement (paragraph 2.3, etc.)

13 There is merit to the argument that the Company should not have to file if it is not
14 overearning. Rate cases are expensive and costly and those costs usually become the burden
15 of the ratepayer. Ratepayers should not be subject to the costs of a rate case unless there is a
16 good reason for the Company to file. RUCO would not object to a new Agreement provided the
17 above conditions are met.

18 RUCO takes no position on the Company's request to modify the CAGR Adjuster at this
19 time.

20 RESPECTFULLY SUBMITTED this 9th day of June, 2015

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Daniel W. Pozefsky
Chief Counsel

1 AN ORIGINAL AND THIRTEEN COPIES
2 of the foregoing filed this 9th day
3 of June, 2013 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington
7 Phoenix, Arizona 85007

8 Copy of the foregoing mailed/hand delivered this
9 9th day of June, 2015 to:

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12 Arizona Corporation Commission
13 1200 West Washington
14 Phoenix, Arizona 85007

15 Teena Jibilian
16 Administrative Law Judge
17 Hearing Division
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007

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23 Arizona Corporation Commission
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8 By Cheryl Fraulob
Cheryl Fraulob

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EXHIBIT A

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

I. RECITALS

- 1.1 On September 15, 2011, the Arizona Corporation Commission ("Commission") established the rates for Johnson Utilities, LLC ("Johnson" or the "Company") in Decision No. 72579. Decision No. 72579 amended the rates that had been set for Johnson in Decision No. 71854 issued on August 25, 2010.
- 1.2 On March 8, 2013, the Company filed a petition to amend Decision No. 71854 under §40-252 to allow for imputed income taxes. On June 27, 2013, the Commission issued Decision No. 73992 which approved the Company's request to amend Decision No. 71854 to impute income taxes.
- 1.3 On July 26, 2013, the Company filed a Petition for Rehearing of Decision No. 73992 ("Petition") requesting the Commission to modify the rate case filing requirement in Decision No. 73992 to June 30, 2017, using a 2016 test year.
- 1.4 On July 31, 2013, the Residential Utility Consumer Office ("RUCO") filed an Application for Rehearing of Decision 73992 ("Application") requesting that the Commission reconsider its decision to allow imputed income tax expense in the rates of Johnson.
- 1.5 The Commission subsequently granted both the Company's Petition and RUCO's Application. Thereafter, RUCO and the Company met for the purpose of settling the matter and arrived at an agreement ("Agreement"), as set forth herein.
- 1.6 The Signatories believe that this Agreement is a fair resolution to this matter and all things considered is in the public interest. The benefits include:
 - Independent verification that the Company's member's actual weighted average tax rate is at least equal to or higher than the imputed rate of 25% that the Signatories are agreeing to in this Agreement.
 - Will reduce the applicable income tax rate to from 36.6558% to 25% for the wastewater division.
 - Will require the Company to file its next rate case by June 30, 2016, using a 2015 test year as opposed to filing by June 30, 2017, using a 2016 test year as requested by the Company in its Petition.

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

- Will require the Company to file yearly earnings reports for the years 2013 and 2014 prior to the next rate case.
- Avoids further litigation and cost to both Signatories.
- Will not impair RUCO's right to challenge or the Company's rights to support future determinations regarding the imputation of income tax for limited liability companies, subchapter S corporations, and other forms of tax pass-through entities.

II. TERMS AND CONDITIONS

- 2.1 The Company shall provide verification prior to the filing of this Agreement with the Commission through an independent third party certified public accountant (CPA) that the weighted average of the income taxes paid by all of the Company's shareholders for the 2007 test year is at least equal to or greater than 25%.
- 2.2 The applicable income tax rate for purposes of determining the amount of income tax to be imputed shall be reduced to 25% for the Company's wastewater division. Within thirty days of Commission approval of this Agreement, the Company will file a revised tariff with the new lower wastewater rates. The new wastewater rates shall be effective for all billings by the Company on and after the date of the Commission order approving this Agreement. This Agreement shall not affect the rates for water service approved in Decision 73992, which shall remain in effect.
- 2.3 The Company shall file a yearly earnings report starting with 2013 by the last day of the following February for each year prior to the next rate case filing. The Company shall make such filings in the form of the schedules attached hereto as Exhibit A.
- 2.4 The Company shall file its next rate case by June 30, 2016 and shall use the 2015 calendar test year.
- 2.5 If the Commission approves this Agreement, neither Signatory will thereafter challenge Commission's Decision 73992 for any reason.
- 2.6 The purpose of this Agreement is to resolve RUCO's Application and the Company's Petition and not to act as precedent and impair or impede in any manner either Signatory's right to challenge and/or support any future decision of the Commission in any other case on any of the issues that are the subject of this Agreement. The Signatories understand and accept that future positions of the Signatories in other cases on the same issues which are inconsistent or adverse to the positions taken by the Signatories in this Agreement do not constitute a breach of this Agreement for failure to support the terms and conditions of this Agreement, or any other reason.

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

III. COMMISSION EVALUATION OF PROPOSED SETTLEMENT

- 3.1 This Agreement will serve as a procedural device by which the Signatories will submit their proposed settlement to the Commission.
- 3.2 The Signatories recognize that the Commission will independently consider and evaluate the terms of this Agreement. If the Commission issues an order adopting all material terms of this Agreement, such action shall constitute Commission approval of the Agreement. Thereafter, the Signatories shall abide by the terms as approved by the Commission.
- 3.3 If the Commission fails to issue an order adopting all material terms of this Agreement, either Signatory may withdraw from this Agreement, and such Signatory may pursue without prejudice its respective remedies at law. For purposes of this Agreement, whether a term is "material" shall be left to the discretion of the Signatory choosing to withdraw from the Agreement.

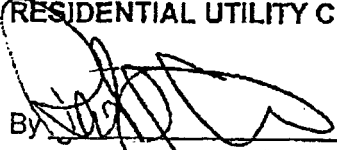
IV. MISCELLANEOUS PROVISIONS

- 4.1 The acceptance by any Signatory of a specific element of this Agreement shall not be considered as precedent for acceptance of that element in any other context.
- 4.2 No Signatory is bound by any position asserted in negotiations, except as expressly stated in this Agreement. No Signatory shall offer evidence of conduct or statements made in the course of negotiating this Agreement before this Commission, any other regulatory agency, or any court.
- 4.3 Neither this Agreement nor any of the positions taken in this Agreement by any of the Signatories may be referred to, cited, and or relied upon as precedent in any proceeding before the Commission, any other regulatory agency, or any court for any purpose except to secure approval of this Agreement and enforce its terms.
- 4.4 To the extent any provision of this Agreement is inconsistent with any existing Commission order, rule, or regulation, this Agreement shall control.

**PROPOSED SETTLEMENT AGREEMENT
DOCKET NO. WS-02987A-08-0180**

- 4.5 Each of the terms of this Agreement is in consideration of all other terms of this Agreement. Accordingly, the terms are not severable.
- 4.6 The Signatories shall make reasonable and good faith efforts necessary to obtain a Commission order approving this Agreement. The Signatories shall support and defend this Agreement before the Commission. Subject to paragraph 3.2 above, if the Commission adopts an order approving all material terms of the Agreement, the Signatories will support and defend the Commission's order before any court or regulatory agency in which it may be at issue.
- 4.7. This Agreement may be executed in any number of counterparts and by each Signatory on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may also be executed electronically or by facsimile.

RESIDENTIAL UTILITY CONSUMER OFFICE

By 
Title Director - RUCC
Date 10/30/2013

JOHNSON UTILITIES, LLC

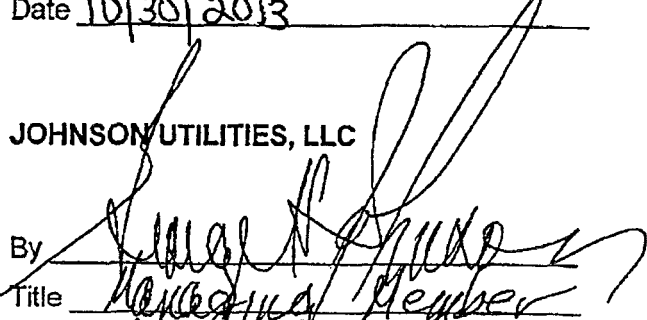
By 
Title Managing Member
Date 11-10-13

EXHIBIT B



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BEFORE THE ARIZONA CORPORATION CC.....

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AZ CORP COMMISSION
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BOB STUMP
CHAIRMAN
GARY PIERCE
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COMMISSIONER
BOB BURNS
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Arizona Corporation Commission

DOCKETED

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RUCO'S CLOSING BRIEF

DOCKETED BY

The Residential Utility Consumer Office ("RUCO") hereby files its Closing Brief in support of the Settlement reached between RUCO and Johnson Utilities ("Johnson" or "Company") in the matter of RUCO and the Company's Application to Rehear Decision No. 72579.

A) THE SETTLEMENT IS IN THE PUBLIC INTEREST**1) BACKGROUND**

On September 15, 2011, the Commission issued Decision No. 72579, establishing the current rates for Johnson Utilities. R-1 at 3. This Decision amended the rates that had been set for Johnson in Decision No. 71854, issued August 25, 2010. Id. Decision No. 72579 also provided that Johnson could seek an allowance for income taxes generated as a result of its operations if the Commission changed its policy regarding the treatment of income taxes for pass-through entities. Id.

1 The last issue of significance that is settled concerns the filing of the Company's next
2 rate case. Johnson Utilities did not agree with the requirement that the Company has to file a
3 full rate case application for both the water and wastewater divisions no later than June 30,
4 2015, using a 2014 test year. Johnson was requesting a rate case filing no later than June 30,
5 2016, using a test year of 2015. This agreement provides that the Company will file its next rate
6 case no later than June 30, 2016, using a test year of 2015. R-2 at 5.

7 RUCO was not particularly concerned about the Company's request. This seems to be
8 more of an issue for Staff. RUCO believes that the instant annual savings to ratepayers of
9 \$286,000 was extremely critical in this case and outweighs any potential harm associated with
10 the later filing. Moreover, RUCO surely is receptive to new rates going into effect later rather
11 than sooner if those rates are an increase over the current rates. Id.

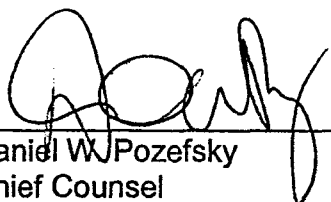
12 RUCO is opposed to Staff's position that if the Commission is not willing to bifurcate the
13 issues then the Settlement should be rejected. RUCO thinks this would be a travesty to
14 Johnson's ratepayers. The Settlement offers a clear bonafide benefit in the annual savings by
15 the lower rate. To give up this savings in order to move up a rate case that could raise the
16 ratepayer's rates even sooner is simply absurd and should not be considered.

17 **4) CONCLUSION**

18 The Commission should approve the Settlement Agreement – it is in the public interest.

19 RESPECTFULLY SUBMITTED this 18th day of April, 2014.

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Daniel W. Pozefsky
Chief Counsel